

### REMARKS/ARGUMENTS

The Office Action dated May 26, 2009 has been carefully considered and is appreciated. For the reasons discussed below in more detail, the Applicants respectfully traverse the rejections, and it is believed that this application is in condition for allowance. Accordingly, favorable reconsideration of the pending application is respectfully requested in view of the foregoing amendments and the following remarks.

#### Status of the Application

Claims 1-4 and 6-19 are currently pending, with claims 1 and 19 being independent. Claim 1 is being amended herein in line with the agreement reached during the Examiner Interview held on July 28, 2009. No new matter has been added by way of amendments submitted herein. Claims 2-4 and 19 have been cancelled without prejudice.

#### Summary of the Office Action

Claims 1-4, 6-7, 13-14, and 16-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,385,589 (hereinafter "Trusheim") in view of U.S. Pub. No. 2002/012866 (hereinafter "Goetzke"). Claims 8-9, 11-12, and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Trusheim in view of Goetzke and in further view of U.S. Patent No. 5,692,501 (hereinafter "Minturn").

#### Discussion

Independent claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Trusheim in view of Goetzke. With respect to the "second score reflecting relative desirability of intervention in a health care regimen of the intervention candidate," as recited in claim 1, the Office Action cites to the "baseline course of treatment" in paragraph 0066 of Goetzke. See Office Action, page 4. In the context of modeling a treatment plan for a particular patient, Goetzke goes on to state that the patient's "Medical Profile" is incorporated into the treatment model and determines the "baseline course of treatment." See Goetzke, pars. 0064-0066. The baseline course of treatment for a particular patient merely implies a set of medical procedures and medications required by the patient based on the Medical Profile and does not represent a

score computed to reflect a relative desirability of intervention in a given patient's medical regimen. While Goetzke generally discusses "scoring" of certain elements of the patient's course of treatment, such as "intensity" and "duration" of treatment, such scores do not represent the relative desirability of intervention that would occur prior to the treatment itself. *See* Goetzke, Figure 16.

Furthermore, as amended, claim 1 recites that the "second score" is determined by adding a plurality of numerical values corresponding to a predetermined number of occurrences of one of the plurality of health care services. *See* Application, Table 1, par. 0036. Additionally, the "second score" of claim 1 is based on a plurality of health care services previously consumed by the health care plan participant. Claim 1 states, in relevant part:

second score is a function of the extent of the intervention candidate's prior consumption of a plurality of different predetermined health care services over a predetermined time interval, the predetermined health care services comprising:

- a unique drug prescription,
- an instance of an inpatient admission,
- an existence of a chronic disease or condition,
- a unique medical specialty consultation,
- an allowed medical claim exceeding a predetermined monetary threshold, and
- an emergency room visit

The Applicants respectfully submit that such a second score reflecting a desirability of intervention in a health care regimen of a health care plan participant is not taught or suggested by Goetzke, Trusheim, or other references cited in the Office Action.

With respect to the "first score ... reflect[ing] a predicted utilization of future health care services" recited in claim 1, the Office Action relies on column 10, lines 24-34 of Trusheim. Office Action, page 3. The Applicants note that while this particular part of Trusheim has been addressed in the prior response with respect to its lack of disclosure of the "second score" relating to past utilization of health care services, the Office Action currently appears to be relying on this part of Trusheim for the disclosure of a predicted utilization of future health services reflected in the "first score." However, the cited portion of Trusheim is lacking a teaching of predicting future consumption of health care services and expressing the prediction results as a "first score" for the

health plan member. Instead, the cited paragraph of Trusheim merely discusses what actions (“SOPs” – Standard Operating Procedures) may be taken for addressing a particular risk situation. *See* Trusheim, col. 10, ll. 24-30. One of such actions (or SOPs), includes performing a health assessment of the patient. *See* Trusheim, col. 10, ll. 26-34. It is the patient’s responses to the health assessment questions that are scored. *Id.* Mere computation of “a score” for some purpose (such as to express a relative health assessment) does not result in expressing a prediction of future consumption of health care services by way of a “first score” recited in claim 1. In fact, the Office Action already correctly states that the Trusheim’s score is merely “based on an evaluation of the patient ... health situation.” Office Action, page 3.

Based on the foregoing, the Applicants believe that the asserted combination of Trusheim and Goetzke does not teach or suggest the “first score” and the “second score,” as expressed in the amended claim 1.

Dependent claims 6-18 incorporate all of the requirements of independent claim 1 and, therefore, are also patentable for at least the same reasons.

#### Conclusion

Applicants respectfully submit that the patent application is in condition for allowance. If, in the opinion of the Examiner, a telephone conference would expedite the prosecution of the subject application, the Examiner is invited to call the undersigned attorney.

Respectfully submitted,

/Dimitry Kapmar/

Dimitry Kapmar, Reg. No. 62,998  
LEYDIG, VOIT & MAYER, LTD.  
Two Prudential Plaza, Suite 4900  
180 North Stetson Avenue  
Chicago, Illinois 60601-6731  
(312) 616-5600 (telephone)  
(312) 616-5700 (facsimile)

Date: August 19, 2009